

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES E. ROLLINS, JR.,

Defendant.

Case No. 08-cv-665-DRH

ORDER

HERNDON, Chief Judge:

On August 21, 2011, the Court entered an Order (Doc. 25) denying and dismissing with prejudice petitioner James Rollins's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). On September 1, 2011, Rollins motioned for leave to amend his 2255 petition. Thus, Rollins's motion for leave to amend is untimely.

Furthermore, the matters addressed in Mr. Rollins's motion do not support a further review of his petition even if the Court were to allow him to amend his petition. The Court found that after exploring the question of an appeal it became clear to all concerned that appeal was not a wise option. One reason an appeal was not advisable was the possibility that if it should come to pass that an appeal should result in a resentencing, Mr. Rollins could actually receive a greater sentence. The

first sentence did not include relevant conduct from “acquitted conduct” as it is known in sentencing parlance. Upon resentencing, however, the Court would be free to reconsider that issue and the defendant’s counsel strongly advised against an appeal for that reason among others.

The Court found that it was credible evidence for Rollins’s counsel to testify that the defendant chose not to appeal and to convey that message through his sister. The amendment proposed by the defendant now is untimely and unhelpful.

Accordingly, it is DENIED.

IT IS SO ORDERED.

Signed this 2nd day of September.

David R. Herndon



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Herndon
Date: 2011.09.02 15:47:39 -05'00'

**Chief Judge
United States District Court**